

The most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. Please see 86 Ill. Adm. Code 270.115 (This is a GIL).

August 25, 1999

Dear Xxxxx:

This letter is in response to your letter dated June 21, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am seeking a written ruling on behalf of a client.

The client is headquartered outside of Illinois and is a retailer of tangible consumer (mostly non-food) merchandise. Marketing is carried on through two separate venues - retail stores and nationwide catalog/mail order. It has several stores in Illinois as well as in other states. Only very rarely are the stores involved in the mail order operation and vice versa. Mail order customers order through a widely distributed catalog by calling an 800 number at company headquarters or by mailing in a tear out order form in the catalog. Mail order merchandise is sent directly to the customer by common carrier, usually UPS, from a central warehouse located outside of Illinois. Payment for the merchandise either accompanies the order form or is by customer credit card charge.

The client has been collecting and reporting Illinois sales and/or use taxes on both Illinois store sales and Illinois destined mail order shipments for some years now. Store sales are taxed at the appropriate city rates, e.g. 8.75% for Chicago. Mail order sales to customers located outside the store cities are taxed at the 6.25% use tax rate. On the other hand, it has been heretofore believed that rates charged mail order customers residing within the Illinois store cities should be the same (sales tax) rates as those which would have been charged had those customers made the same purchases at their local retail store. This reasoning has been based on the fact that my client has established nexus in those cities. The question I would like you to address is whether or not this is correct.

For example, should a Chicago (a store city) mail order customer be charged the 8.75% sales tax rate or the 6.25% use tax rate?

Thank you, in advance, for your help in this matter.

A Chicago mail order customer should be charged the State 6.25% rate so long as the purchase order is accepted out-of-State and the property being sold is located outside of Illinois at the time of sale.

Because your question regards the imposition of local taxes in Illinois on sales made to Illinois customers through your mail order operation, the following general information on the collection of local taxes is provided for your consideration. Because you operate stores in Illinois you clearly have nexus with Illinois for the collection of the State Use Tax and, if appropriate, the local taxes on such sales. Local taxes are triggered when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. Please see the enclosed copy of 86 Ill. Adm. Code 270.115 concerning jurisdictional questions of the Home Rule Municipal Retailers' Occupation Tax. The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State is also immaterial for purposes of local taxes because if the sale occurs in an Illinois jurisdiction imposing a local tax, the local tax will be incurred.

For purposes of determining the location where the "selling" occurs, the regulation governing the Home Rule Municipal Retailers' Occupation Tax (86 Ill. Adm. Code 270.115) states in Subsection (b)(3): "the place where the property is located at the time of the sale (or subsequent production in Illinois) will determine where the seller is engaged in business for Home Rule Municipal Retailers' Occupation Tax purposes with respect to such sale." This means if the purchase order for a sale of tangible personal property is accepted out-of-State and the property to be transferred in the sale is located or subsequently produced in a Home Rule Municipality/County/Mass Transit (e.g. RTA) District jurisdiction, then that particular jurisdiction where the property is located (or subsequently produced) is considered the seller's place of business for that particular sale. So for sales where the tangible personal property to be transferred is located (or subsequently produced) in a local tax jurisdiction, local tax would be due even if the seller accepts the purchase order out-of-State. See also 86 Ill. Adm. Code 130.605(a) where it explains that when tangible personal property is located in this State at the time of its sale (or is subsequently produced in Illinois), and then delivered in Illinois to the purchaser, the seller is taxable if the transaction is at retail. For Illinois retail sales the seller is required to collect the local taxes from the customer in addition to Illinois Use Tax.

Although the enclosed regulation (Section 270.115) concerns the Home Rule Municipal Retailers' Occupation Tax, the same principles outlined in this regulation apply to other local taxes administered by the Department (e.g., the

Regional Transportation Authority Retailers' Occupation Tax or the DuPage County Water Commission Retailers' Occupation Tax).

In summary, if the purchase order is not accepted in Illinois and the property being sold is not located (or subsequently produced) in Illinois, only the State Use Tax (6.25%) needs to be collected. If either the purchase order is accepted in Illinois or the property being sold is located in Illinois (or is subsequently produced in Illinois), then the transaction is an Illinois retail sale and the local taxes must be collected as well as the Illinois Use Tax.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.